IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 955 of 2003
with
CIVIL APPLICATION NO. 3282 OF 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRASPORT CORP.

Versus

NARMADABEN W/O TRIBHOVANDAS MANGALDAS PATEL

Appearance:

1. First Appeal No. 955 of 2003
MS ROOPAL R PATEL for Appellant/applicant
MR MTM HAKIM for Opponents Nos.1 to 3.
Opponent No. 4 deleted

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 06/08/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

Admit. Mr.M.T.M.Hakim, learned Counsel waives the service of notice of admission on behalf of opponents Nos.1 to 3. At the request of learned Counsel Ms.Roopal Patel, opponent No.4 is ordered to be deleted.

2. With the consent of learned Counsel appearing for the parties, this appeal is finally heard and disposed of today by this judgment.

3. The facts giving rise to this appeal, as stated in the claim application, are as under:

On 13.12.1989 at about 9.45 a.m., deceased Tribhovandas Mangaldas Patel aged 43 years, was going on his motorcycle No.GJ-06-1727 from his village Dumali to Jaloda. The deceased was driving his motorcycle on the correct side of the road with moderate speed. When the deceased came near the curve of the road near the house of Bhavla Dalia, the original opponent No.1 came driving his ST bus No.GRQ-8593 with speed and dashed against the motorcycle of the deceased. As a result of this, deceased fell down on the left side of the road and sustained serious injuries on his head. Since the deceased was near the curve and the opponent No.1 was driving his bus with speed, he could see the deceased. Where the accident occurred, the road is narrow and it is hardly 8 ft. broad pakka road and there is 2 ft. kaccha road on both the sides. It is, therefore, averred in the application that the accident happened because of the rash and negligent driving by the driver of the bus. The deceased expired on 18.12.1989 due to the injuries on his head during treatment at SSG Hospital, at Vadodara.

As per the say of the claimants, the deceased being an agriculturist, was growing cotton, paddy and Tuvar etc. He was having 28 acres of agricultural land in his village Nani Dumali of Chhotaudepur Taluka and was personally cultivating his land. He was completely devoting his whole life for agriculture. He was also keeping 3 buffaloes and selling milk of Rs.1,500/- to Rs.2,000/- per month. He was earning more than Rs.1,00,000/- from agricultural land. In near future, he intended to dig a tubewell for irrigation purpose. Due to untimely death of the deceased, the claimants have suffered great mental pain and agony. According to the claimants, the deceased was the only source of income in

the family. Applicant No.2 is son of the deceased, doing service in Halol in private concern. Due to premature death of the deceased, applicant No.2 left his service and now he is looking after the agricultural land. Since he has no experience of agriculture as his father who was experienced and very efficient in agricultural operations and did all the work. Hence, he has to keep a male servant for agricultural work. The claimants have thus claimed a total amount of Rs.5 lacs together with cost and interest at the rate of 15% per annum from the date of the application till realisation. The said amount includes Rs.12,000/- for medical expenses; Rs.4,000 to Rs.5,000/- for miscellaneous expenses; Rs.15,000/- for mental pain and agony to the deceased and pecuniary loss for expectation of life and consortium, and Rs.10,000/- for death ceremony expenses.

The parties have led oral as well as documentary evidence before the Tribunal.

4. Learned Counsel appearing for the appellant has not challenged the findings of rash and negligent driving by the driver of the vehicle involved in the accident. Therefore, it is not necessary for us to discuss the said question. As the learned Counsel for the appellant challenges the legality of the quantum of the compensation of Rs.4,61,000/awarded by the Tribunal, we are required to deal with the said contention. According to her, the compensation of Rs.4,61,000/- awarded by the Tribunal is on the higher side considering the evidence regarding the future loss of income and dependency of the claimants. Learned Counsel, thus submits that the amount of Rs.3,96,000/- awarded under this head is required to be reduced.

Learned Counsel Mr.Hakim appearing for the claimants very fairly conceded to the submission of learned Counsel for the appellant and submits that an amount of Rs.46,000/- can be reduced from the future loss of income and dependency of the opponents Nos.1 1 to 3. We appreciate the fine gesture shown by learned Counsel Mr.Hakim. Learned Counsel Ms.Roopal Patel for the appellant also accepts the offer to reduce Rs.46,000/made by Mr.Hakim for the claimants.

5. In view of the above, we feel that the dispute is amicably resolved. Therefore, it is not necessary for us to consider the evidence on the question of quantum. We accordingly feel that the appeal is required to be allowed by deducting an amount of Rs.46,000/- from Rs.4,61,000/- as awarded by the Tribunal.

6. In the result, this appeal is partly allowed. The judgment and award of the Tribunal dated 22.1.2002 is modified to the extent that the appellant shall pay Rs.4,15,000/- (Rupees Four lacs fifteen thousand only) to the opponents Nos.1 to 3 as compensation together with interest at the rate of 9% per year from the date of the petition till realisation with proportionate costs.

7. We are told that the appellant has deposited the entire amount of compensation before the Tribunal. In that view of the matter, the appellant will be entitled to withdraw the excess amount. Award to be drawn accordingly. Direct service is permitted.

8. In view of the order as above in the main appeal, the Civil Application for stay stands disposed of. Ad-interim relief, if any, shall stand vacated.

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)
Sreeram.